

Message Text

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GENEVA FOR G. ALDRICH AND W. SOLF

E.O. 11652: N/A

TAGS: ICRC, PARM, PFOR

SUBJECT: INTERNATIONAL HUMANITARIAN LAW

1. DEPT. RECEIVED ON MARCH 17 FOLLOWING DIPLOMATIC NOTE
FROM ISRAELI EMBASSY. (REFERENCE TO "THIRD SESSION" AND
DATES OF DIPLOMATIC CONFERENCE ARE APPARENTLY TECHNICAL
ERRORS.)

2. BEGIN TEXT: THE EMBASSY OF ISRAEL PRESENTS ITS COMPLI-
MENTS TO THE DEPARTMENT OF STATE AND HAS THE HONOR TO BRING
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TO THE ATTENTION OF THE DEPARTMENT A PROPOSAL CONCERNING
THE RECOGNITION OF THE SHIELD OF DAVID SUBMITTED BY ISRAEL
TO THE DIPLOMATIC CONFERENCE ON THE REAFFIRMATION AND DE-
VELOPMENT OF INTERNATIONAL HUMANITARIAN LAW APPLICABLE IN
ARMED CONFLICTS. THE THIRD SESSION OF THE CONFERENCE CON-
VENES ON 21 APR,L.

THE PROPOSAL (CDDH/I/286 OF APRIL 10, 1975) PROPOSES TO ADD THE FOLLOWING NEW ARTICLE TO THE DRAFT ADDITIONAL PROTOCOLS TO THE GENEVA CONVENTIONS OF AUGUST 12, 1949.

ADD THE FOLLOWING NEW ARTICLE 2 BIS TO PART I OF PROTOCOL I: "WHERE THE RED SHIELD OF DAVID ON A WHITE GROUND IS ALREADY USED AS A DISTINCTIVE EMBLEM, THAT EMBLEM IS ALSO RECOGNIZED BY THE TERMS OF THE CONVENTIONS AND THE PRESENT PROTOCOL."

THE BACKGROUND TO THE PROPOSAL IS THAT EVER SINCE ITS ESTABLISHMENT ISRAEL HAS USED THE MAGEN DAVID ADOM (RED SHIELD OF DAVID) AS THE DISTINCTIVE EMBLEM OF THE MEDICAL SERVICES OF ITS ARMED FORCES, WHILE RESPECTING THE INVIOABILITY OF THE DISTINCTIVE SIGNS AND EMBLEMS OF THE 1949 CONVENTIONS. THE SHIELD OF DAVID IS UNIVERSALLY KNOWN AND RECOGNIZED AS AN EMBLEM SYMBOLIZING JUDAISM, MUCH IN THE SAME WAY THAT THE CROSS SYMBOLIZES CHRISTIANITY, THE PRESENT ISLAM AND SO ON. IT IS MAINTAINED ON THE NATIONAL FLAG AND IS WIDELY USED IN JEWISH RELIGIOUS AND SECULAR LIFE. AS SUCH IT HAS A LONG HISTORY, ANTEDATING THE STATE OF ISRAEL. THE REPORT OF COMMITTEE I AT THE 1949 CONFERENCE RECOGNIZED THAT THE EMBLEM IS WELL KNOWN AND RESPECTED IN THOSE PARTS OF THE WORLD IN WHICH IT IS USED.

AT THE 1949 DIPLOMATIC CONFERENCE ISRAEL SUBMITTED A FORMAL PROPOSAL TO THE EFFECT THAT, IN ADDITION TO THE THREE EXISTING EMBLEMS, THE RED SHIELD OF DAVID ON A WHITE BACKGROUND SHOULD ALSO BE RECOGNIZED AS ITS DISTINCTIVE EMBLEM. LIMITED OFFICIAL USE

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NEVERTHELESS, BY THE NARROWEST MARGIN OF 21 VOTES IN FAVOUR AND 22 AGAINST, WITH SEVEN ABSTENTIONS, THAT AMENDMENT WAS REJECTED BY THE CONFERENCE. THE CONSEQUENCE WAS THAT IN ORDER TO PROTECT ITS LEGAL POSITION ISRAEL MADE ITS SIGNATURE AND SUBSEQUENT RATIFICATION OF THE 1949 CONVENTION SUBJECT TO RESERVATIONS RESERVATIONS IN THE MEANTIME ESTABLISHED IN ACCORDANCE WITH THE VIENNA CONVENTION OF 1969 ON THE LAW OF TREATIES. THE RESERVATION TO THE CONVENTION FOR THE AMELIORATION OF THE CONDITION OF THE WOUNDED AND SICK IN ARMED FORCES IN THE FIELD IS WORDED AS FOLLOWS: "SUBJECT TO THE RESERVATION THAT, WHILE RESPECTING THE INVIOABILITY OF THE DISTINCTIVE SIGNS AND EMBLEMS OF THE CONVENTION, ISRAEL WILL USE THE RED SHIELD OF DAVID AS THE EMBLEM AND DISTINCTIVE SIGN OF THE MEDICAL SERVICES OF HER ARMED FORCES."

CORRESPONDING RESERVATIONS WERE MADE TO THE SECOND AND FOURTH CONVENTIONS (NONE USING NECESSARY AS REGARDS THE THIRD).

REASONS DEEPLY ROOTED IN ITS RELIGIOUS AND NATIONAL TRADITIONS AND ITS HISTORY COMPEL ISRAEL TO USE THE RED SHIELD OF DAVID FOR THE PURPOSES OF THE CONVENTIONS, AND MAKE IT QUITE OUT OF THE QUESTION FOR ISRAEL TO USE ANY OF THE OTHER CURRENTLY RECOGNIZED EMBLEMS. IN SAYING THIS, ISRAEL DOES NOT WISH TO CONTEST THE VIEW THAT IN THE MINDS OF MANY, THOSE EMBLEMS MAY NOT NECESSARILY POSSESS A RELIGIOUS SIGNIFICANCE. THE FACT REMAINS THAT IN THE POPULAR ESTIMATION THEY ARE SYMBOLS HAVING A RELIGIOUS ORIGIN, OR AT LEAST A RELIGIOUS IMPLICATION. IT IS IN THAT ASSOCIATION OF IDEAS THAT THE INCONGRUITY OF THE ATTEMPTS TO IMPOSE ON ISRAEL ONE OF THE EXISTING RECOGNIZED EMBLEMS IS SEATED.

A PARTICULARLY BLATANT ANOMALY RESULTING FROM THE NON-RECOGNITION OF THE RED SHIELD OF DAVID IS ACCENTUATED IN ARTICLE 18, PARAGRAPH 3 OF DRAFT PROTOCOL 1, CONCERNING LIMITED OFFICIAL USE

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CIVILIAN MEDICAL AND RELIGIOUS PERSONNEL, WHICH IS SUSCEPTIBLE TO AN INTERPRETATION THAT CIVILIAN RABBIS, IN THE CIRCUMSTANCES CONTEMPLATED BY THE DRAFT ARTICLE WILL HAVE TO IDENTIFY THEMSELVES BY MEANS OF ONE OF THE OTHER EMBLEMS THIS IS NOT THE INTERPRETATION WHICH ISRAEL GIVES TO THAT PROVISION AND, MOREOVER, ISRAEL CONSIDERS THAT SUCH AN INTERPRETATION OF THAT PROVISION WOULD NOT BE ONE MADE IN GOOD FAITH.

ANOTHER ANOMALY RESULTING FROM THE 1949 CONFERENCE IS THAT, ON THE PRETEXT THAT THE MAGEN DAVID ADOM (RED SHIELD OF DAVID) IS NOT A RECOGNIZED EMBLEM, ISRAEL'S NATIONAL SOCIETY, THE MAGEN DAVID ADOM SOCIETY, IS STILL EXCLUDED FROM THE INTERNATIONAL RED CROSS. THIS IS SO NOTWITHSTANDING THE FACT THAT THE SOCIETY MEETS ALL THE NECESSARY QUALIFICATIONS, AND ENJOYS AN INTERNATIONAL REPUTATION FOR THE HIGH STANDARDS OF ITS SERVICES, ITS STANDING IN THE COMMUNITY AND THE SPONTANEITY OF ITS RESPONSES TO DISASTERS AND CRIES OF DISTRESS WHEREVER THEY MIGHT BE, EXTENDING ITS SUCCOUR TO ALL IN NEED, REGARDLESS OF RACE, CREED OR NATIONALITY. SUCH EXCLUSION IS COMPATIBLE NEITHER WITH THE AIMS OF UNIVERSALITY AND NON-DISCRIMINATION WHICH ARE THE HALLMARKS OF THE INTERNATIONAL RED CROSS, NOR WITH THE OBJECTIVES OF THE DIPLOMATIC CONFERENCE, ASPIRING TO STRENGTHEN THE ROLE OF THE NATIONAL SOCIETIES.

THE BELIGERENTS IN THE MIDDLE EAST AS WAS FIRST INDICATED BY THE DELEGATION OF ISRAEL IN 1949, HAVE THROUGHOUT MUTUALLY ACKNOWLEDGED THE RESPECT DUE TO EACH OF THE EMBLEMS IN USE IN THEIR DIFFERENT ARMED FORCES, THE RED CROSS, THE RED CRESCENT AND THE RED SHIELD OF DAVID.

THE FACT THAT THE PROTECTION OF INTERNATIONAL HUMANITARIAN
LAW IS GRANTED TO PROTECTED PERSONS AND OBJECTS AS SUCH,
AND NOT BY VIRTUE OF THE EMBLEM THEY DISPLY DOES NOT, HOW-
EVER, DEROGATE FROM THE NEED TO RESOLVE THE OUTSTANDING
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QUESTIONS REGARDING THE EMBLEM.

THE DIPLOMATIC CONFERENCE CONVENES FOR ISS THIRD SESSION
ON 21 APRIL AND THE EMBASSY TRUSTS THAT THE DEPARTMENT WILL
LEND ITS SUPPORT TO THE PROPOSAL THAT THE RED SHIELD OF
DAVID BE GIVEN THE APPROPRIATE LEGAL RECOGNITION AWARDED

TO THE THREE OTHER VENERABLE SYMBOLS, THE RED CROSS, THE .
RED CRESCENT AND THE RED LION AND SUN.

THE EMBASSY OF ISRAEL TAKES THIS OPPORTUNITY TO RENEW TO
THE DEPARTMENT OF STATE THE ASSURANCES OF ITS HIGHEST
CONSIDERATION. END TEXT
VANCE

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